

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
)	
TIERONE CORPORATION,)	
)	CASE NO. BK10-41974-TLS
Debtor(s).)	A10-4066-TLS
DAVID G. RAY, individually and on behalf of)	8:10CV199
all others similarly situated,)	
)	CH. 7
Plaintiff(s),)	
)	
vs.)	
)	
GILBERT G. LUNDSTROM; MICHAEL J.)	
FALBO; TIERONE CORPORATION;)	
EUGENE B. WITKOWICZ; and)	
CHARLES W. HOSKINS,)	
)	
Defendant(s).)	

REPORT & RECOMMENDATION

This matter is before the court on the parties' status reports (Fils. #5, #7, and #9).

The plaintiff filed this class action securities fraud lawsuit in U.S. District Court in Omaha, Nebraska, on May 20, 2010, against TierOne Corporation and individual defendants who were officers and directors of TierOne. On June 24, 2010, the corporation filed a Chapter 7 bankruptcy petition in Lincoln, Nebraska, which stayed the litigation and caused its transfer to this court as an adversary proceeding.

The plaintiff shareholder alleges violations of the Securities Exchange Act of 1934 by current and former officers and directors of the corporation in that such officers and directors were involved in or aware of false and misleading statements issued by the corporation which affected the market price of the corporation's stock.

The plaintiffs and the two defendants who have filed status reports request that the case be withdrawn to proceed in the district court. The matter does not appear to be a core proceeding as that term is used in bankruptcy law, and it involves issues of federal law not commonly dealt with by this court. In addition, the plaintiffs have requested and may be entitled to a jury trial, which is more appropriately held in the district court.

After reviewing the matter, I respectfully recommend to the United States District Court for the District of Nebraska that reference of this case be withdrawn for further proceedings. The automatic stay in effect as a result of the filing of the bankruptcy petition protects TierOne

Corporation during the pendency of the bankruptcy case, but this case may go forward against the other defendants.

In addition, I particularly want to draw the district court's attention to the pending motion to appoint lead plaintiff (Fil. #3), as the plaintiffs have raised the issue of a statutory deadline nearing expiration concerning representation of the purported class.

The Clerk of the Bankruptcy Court shall process this recommendation pursuant to the local court rules.

DATED: August 11, 2010

RESPECTFULLY SUBMITTED,

/s/ Thomas L. Saladino
Chief Judge

Notice given by the Court to:
Christopher S. Hinton
Laurence M. Rosen
Phillip C. Kim
Brian J. Koenig
Gregory C. Scaglione
David A. Yudelson
Brian S. Kruse
Rick D. Lange
U.S. Trustee